IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

MONDAY, THE 26TH FEBRUARY 2007 / 7TH PHALGUNA 1928

CRL.A.No. 1005 of 2002()

ST.1412/1999 of JUDL. MAGISTRTE OF FIRST CLASS COURT-III, THRISSUR

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APPELLANT: COMPLAINANT:

P.N.PHALGUNAN, S/O. NARAYANAN,
PULLIKKATHARA HOUSE, VADOOKKARA DESOM,
KOORKANCHERY VILLAGE, THRISSUR TALUK.

BY ADV. SRI.JOSE THETTAYIL

RESPONDENTS: ACCUSED:

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1. K.N.SUKUMARAN, S/O.NARAYANAN NAIR,
KADAVATH HOUSE, DEVI CAFE, POOTHOLE, THRISSUR.

2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.C.A.CHACKO
PUBLIC PROSECUTOR, SRI THOMAS JOHN AMBOOKEN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 26/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M.JAMES, J.

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Crl.A. No. 1005 of 2002

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Dated this the 26th day of February, 2007

J U D G M E N T

The complainant, who preferred a complaint, under Section 138 of the Negotiable Instruments Act, in short 'the Act', against the first respondent-accused, is on appeal before this Court, after obtaining leave, as his complaint was dismissed by the court below and accused acquitted in S.T.No.1412/1999 on the file of Judicial Magistrate of the First Class-III, Thrissur.

2. The learned Magistrate has recorded, in his order of dismissal of the complaint, that the complainant as well as his pleader were absent at the time when the case was taken up. In paragraph (3) of the appeal memorandum, it is stated that on 31/12/2001, when the complaint was taken up, the complainant was absent. But an application was filed to condone his absence. It was rejected and the complaint was dismissed. However, this contention raised in the appeal memorandum is not substantiated by the appellant.

3. I heard the arguments advanced by the learned counsel for the first respondent-accused. The offence alleged is under Section 138 of the Act. I have gone through the entire materials otherwise available on record.

4. Considering the facts that are at issue, I am of the view that an opportunity be given to both sides to raise their contentions before the court below. Therefore, I set aside the impugned order dated 31/12/2001 and restore S.T.No.1412/1999 to the file of Judicial Magistrate of the First Class Court-III, Thrissur.

5. The appellant-complainant shall pay an amount of Rs.1000/- (rupees one thousand only), as cost, to the first respondent-accused. This shall be done before the court below, within one week from the date of appearance of the parties. The appellant-complainant as well as the first respondent-accused shall appear before the court below, Judicial Magistrate of the First Class-III, Thrissur, on 26/03/2007.

6. This case being the year 1999, the learned Magistrate shall dispose of the same, at the earliest, in any case, within three months from the date of appearance of the parties.

7. In the event of the failure of the appellant to pay the cost amount, within the above period, this judgment will not come into operation and the order of dismissal of the learned Magistrate, impugned herein, will become effective. In that event, the appellant will have no cause of action.

This appeal is allowed as above.

(J.M.JAMES)
Judge

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